IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.18 OF 1991
IN
LAQ/543(1)

The SLAO (7), Bombay and
Bombay Suburban District

and

Smt.Sharda Pratap Talsania & ors. Claimants

and

The Municipal Commissioner
Greater Bombay Municipal Corporation Acquiring Body

ALONG WITH
LAND ACQUISITION REFERENCE NO.19 OF 1991
IN
LAQ/543(2)

The SLAO (7), Bombay and
Bombay Suburban District

and

Smt.Sharda Pratap Talsania & ors. Claimants

and

The Municipal Commissioner
Greater Bombay Municipal Corporation Acquiring Body

ALONG WITH
LAND ACQUISITION REFERENCE NO.20 OF 1991
IN
LAQ/543(3)

The SLAO (7), Bombay and
Bombay Suburban District

and

Dilip Himatlal Talsania & others — Claimants

and

The Municipal Commissioner
Greater Bombay Municipal Corporation — Acquiring Body

ALONG WITH
LAND ACQUISITION REFERENCE NO.21 OF 1991
IN
LAQ/543(4)

The SLAO (7), Bombay and
Bombay Suburban District

and

Kamal Anil Talsania and others — Claimants

and

The Municipal Commissioner
Greater Bombay Municipal Corporation — Acquiring Body

ALONG WITH
LAND ACQUISITION REFERENCE NO.22 OF 1991
IN
LAQ/543(5)

The SLAO (7), Bombay and
Bombay Suburban District

and

Smt.Sharda Pratap Talsania & ors. — Claimants

and

The Municipal Commissioner
Greater Bombay Municipal Corporation — Acquiring Body

ALONG WITH
LAND ACQUISITION REFERENCE NO.23 OF 1991
IN
LAQ/543(6)

The SLAO (7), Bombay and
Bombay Suburban District

and

Dilip Himatlal Talsania — Claimants

and

The Municipal Commissioner
Greater Bombay Municipal Corporation — Acquiring Body

ALONG WITH
LAND ACQUISITION REFERENCE NO.25 OF 1991
IN
LAQ/543(7)

The SLAO (7), Bombay and
Bombay Suburban District

and

Kamal Anil Talsania — Claimants

and

The Municipal Commissioner
Greater Bombay Municipal Corporation — Acquiring Body

APPEARANCES

In LAR Nos.18/1991 to 23/1991 & 25/1991

Shri R.J.Mane for SLAO.

Shri U.J.Makhija with Shri H.C.Pimple for Municipal Corpn. of Greater Bombay - Acquiring Body.

Shri C.M.Korde with Shri J. Chandran i/by

Purnanand & Co. for claimants.

In LAR No.26/1991

Shri R.J.Mane for SLAO.

Shri U.J.Makhija with Shri H.C.Pimple for Municipal Corpn. of Greater Bombay - Acquiring Body.

Shri P.C.Mody with Ms.N.Patrawala i/by Pravin Mehta and Mithi for claimants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 04th April 2006

PC :

1. The above Land Acquisition References (for short "LARs") are filed under section 18 of the Land Acquisition Act, 1894. They pertain to same award. The purpose of Acquisition is one and common. The arguments are identical. Hence, they are disposed of by this common judgement.

2. Shri Korde appears for claimants in all LARs except LAR No.26 of 1991 in which Shri Mody appears for claimants. Shri Makhija appears for the Acquiring Body in all references. Shri Mane - AGP appears for Special Land Acquisition Officer ("SLAO" for short).

3. The acquisitions under the present references

were for the purposes of Municipal Corporation of Greater Bombay ("MCGB" for short). The public purpose for which the lands were reserved, is 100 feet wide D.P.Road. The Notification under section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, was published in Maharashtra Government Gazette, Part-I on 5th January 1989. It is agreed that this is the relevant date for valuation. Total area of the lands in question is 10,056.250 square meters. The lands are divided into two survey numbers. Survey No.137/B corresponding to CTS No.822 admeasures 6,540.375 sq.mtrs. whereas CTS No.834 from the same survey number admeasures 3,575.875 sq.mtrs.. The possession of these lands was taken much earlier i.e. on 1st September 1978.

4. It appears that all claimants executed an agreement for advance compensation save and except claimant in LAR No.26 of 1991. A breach of this agreement was alleged and thereupon summary suits were filed in this Court. In terms of the minutes which were tendered in these summary suits, the claimants restricted their claims for interest on the enhanced compensation to 9% p.a.. Before me also, they are restricting

their claims for interest @ 9% p.a.. Consequent upon the agreement, the references for enhanced compensation have been filed.

5. The award of the SLAO has been delivered on 1st October 1990. Balance compensation has been paid to the claimants. However, no interest is paid thereon. The acceptance of amounts by the claimants is under protest. However, in the light of the terms arrived at during the course of disposal of the summary suits, the interest is restricted to 9% p.a. from the date of taking possession.

6. In support of of their claims for enhanced compensation, Shri Dilip Talsania stepped into the witness box on behalf of all claimants in all references. He was cross-examined by the Acquiring Body. Additionally, Valuer’s Report was tendered by the claimants. The Valuer is Shri Sam Phiroze Rao who has been cross examined at length by the Acquiring Body.

7. The facts which are not in dispute are that the lands in question are owned by Talsania Family. The award gives details of the ownership and makes specific reference to the Hindu

Undivided Family constituted by some of the claimants and the members thereof. It is not necessary to make a detailed reference to the same, save and except refer to Internal page 10 of the award which sets out the position of ownership qua each survey number and hissa number.

8. The lands under acquisition are situate at the North of Jaiprakash Road (Versova Road). They are about a kilometre away from Andheri West Railway Station. Some of the lands have a frontage to the Jaiprakash Road. It is also not in dispute that the road on these lands is already constructed. The SLAO assumes that the lands would require filling of atleast one meter to develop the same. At page no.12 of the award, this is what is stated :-

> "... ... ... The land under acquisition starts from J.P.Road, and ends to the nalla in C.T.S.No.834. At the West Corner of the starting point, is a sewerage plant of the B.M.C. while at the east, there are compound walls of the Societies already existing. The land in question is surrounded by developed localities such as Asad Nagar, Dhake Colony, D.N.Nagar, Indian Oil Nagar, Lokhandwala Complex. The J.V.P.D. Scheme which is well developed is at about 2-1/2 K.M. away from the land under acquisition. The other localities

> all around this land as mentioned above, are of higher middle class and within a radious of 3/4 K.M. the remaining vacant lands in the vicinity are also under rapid development. All amenities such as Hospital, Market, High School, College, Stadium, Cinema etc. are available within a radious of 1/2 K.M. Frequent Bus service is also regularly available on the adjoining J.P.Road and no communication problem exists in the area. Because of all these facilities, spot could become an attraction to the higher middle class and it has therefore been rapidly developed both for residential and commercial activities. The land surrounding the land under acquisition is already developed. ... ..."

After referring to the claims and valuation submitted on behalf of the claimants, the SLAO has also taken into account the evidence of Acquiring Body. Although, the MCGB has recommended to pay final compensation @ Rs.320/- per sq.mtr., that is the rate at which advance compensation was paid, ultimately, that is not the rate which is accepted by the SLAO..

9. There are several sale instances which have been referred to by the SLAO.. However, majority of them have been discarded by him by assigning reasons with which the Valuer also does not seem to disagree. The only instance that has been taken as comparable is that of City Survey No.713 of Ambivali admeasuring 2,249.79 sq.mtrs.. This

land was agreed to be sold by one Shri Vazirani to Super Construction Company vide agreement dated 16th October 1986 for a total consideration of Rs.1.18 crores. According to the SLAO, the rate per sq.mtr. works to Rs.5,245/-. Thereafter, by adding annual increase, the SLAO determines the rate on the relevant date of notification i.e. under section 6 of the Act @ Rs.7,135/- per sq.mtr.. It appears that during course of the award the SLAO visited this site and noticed a construction of ground plus seven stories. This structure has several residential flats which were agreed to be sold, and later on purchased by the purchasers, who form a co-operative housing society. The developers have obtained necessary permissions. In these circumstances, the SLAO concluded that the transaction is complete. It is a genuine sale transaction and is thus a guide for determining the compensation in respect of lands under acquisition.

10. He notices the fact that the instance land is situate at Bhardawadi and is at a distance of half kilometre from Andheri Railway Station. The property is surrounded by Khoka Factories and had no direct access at relevant time to Swami

Vivekanand Road. The SLAO has noted the fact that the lands under acquisition are directly touching the Jaiprakash Road. They are located in an area which is already developed for residential and commercial use. All civic amenities are available. He comes to a conclusion that the price of the instance land can be considered as a basis for fixing market value of the lands under acquisition.

11. After assigning reasons for discarding other instances and the contentions of the Acquiring Body, the SLAO makes a comparison with the lands under acquisition and the instance land. At Internal page 24 of the Award, he observes thus:-

> "... ... However, there are some more points described below, which need careful consideration, while fixing the present market value of the land under acquisition in comparison with the land cost arrived at in respect of property bearing C.T.S.No.713 of Ambivali (Sale at Sr.No.13 of Annexure 'B').
>
> As observed above, the present market value of the land in similar locality has been worked out to Rs.7,135/- per Sq. Mtrs. but the said valuation is in respect of a plot of less area with good shape in developed locality near Andheri Station, while the land under acquisition is big chunk of more than 10,000 sq. Mtrs; requiring filling, having depth from the existing road and a streep of land away from Andheri Station.

Therefore, this rate cannot be made applicable as it is to be big plot of 10,000 sq. Mtrs. It will have to be proportionately reduced for the following reasons.

Due deduction will have to be given for the areas that will be consumed in internal roads and open spaces to be provided while preparing a lay-out of such a large area of 10,000 sq.mtrs..

Considerable expenses will have to be made on payment of professional fees to the Architect for preparing layout and building Plan and legal charges to the Solicitors for preparing Agreements etc.

The land under acquisition required a filling of at least a metre to bring it to the development status for laying out plots.

Cost of infrastructures required to be completed by the Developer, while developing the spot for residential user.

Time consumed in selling the plots or flats and the liability of interest created thereby.

12. From a perusal of the above it is abundantly clear that the SLAO has gone ahead and made deductions and allowances firstly on account of internal roads and open spaces qua the lands under acquisition, secondly, that they would require filling atleast of one meter for rendering them fit for development. Thirdly, cost of infrastructure required to be provided while developing the land for residential user and lastly time consumed in selling plots/flats

and the liability of interest created thereby.

13. In the award, a reference is made to another acquisition of July 1987 and the rate of Rs.1,400/- per sq.mtre. awarded to the land covered by that reference. However, before me, parties agree that no documents pertaining to this acquisition are available and no reliance can, therefore, be placed thereupon. Therefore, it is not necessary to go into this aspect. The SLAO, influenced to a certain extent by the said reference, awards compensation @ Rs.2,500/- per sq.mtr. so far as the land CTS No.822 (Part). The distinction that he makes in lands under acquisition, is on the basis of their direct frontage to the existing road (Jaiprakash Road), and, therefore, awards higher compensation to those directly abutting to the same. In other words, he fixes Rs.2,500/- per sq.mtr. for the land admeasuring 6,540.370 sq.mtr. and for the other portion namely 3,515.875 sq.mtrs. @ Rs.1,600/- per sq.mtr..

14. As observed above, not satisfied with this rate that the present references have been filed.

15. The claimants have pointed out that the

lands under acquisition had frontage on Jaiprakash Road. They were fully vacant. There were no encroachments or other occupants on the land. The land was fairly even and required some filling to raise it to the level of Jaiprakash Road. The claimants have also pointed out that the area of every plot acquired is different. They are not uniform in size. In the claimants cross examination it is admitted that only some of the plots have direct access to Jaiprakash Road.

16. As far as Valuer is concerned, he also does not dispute that there is only one instance namely of Vazirani's land, which can be said to be comparable. He also does not dispute the basis on which the SLAO has proceeded namely taking the entire lands as a single block. However, in his report dated 21st September 2005, he has highlighted the fact that in comparison with the instance land, the lands under acquisition are superior. He points out that localities around the land are of higher middle class. There is rapid development in the vicinity. All amenities such as Hospitals, Market, High School, College, Stadium etc. are available within a radious of half kilometre.

There is Bus Service which is regularly available. There is no communication problem. The plot/land can be developed both for residential and commercial activities. More so, when the surrounding lands are already developed.

17. The Valuer points out that the major distinguishing factor between the lands under acquisition and the instance land, is that the lands under acquisition are situate on an arterial road namely Jaiprakash Road, whereas, instance land abuts on the proposed D.P.Road and away from Ceasor Road. According to the Valuer, the SLAO has admitted the position that the instance land is surrounded by Khoka Factories of the Migrants Ideal Producers Co-operative Housing Society Limited who are already the Lessees of that land. A distance of extra half kilometre from the station as far as lands under acquisition, would not make material difference. More so, considering the other advantage of the land having direct access to the Jaiprakash Road. According to the Valuer, the instance land does not have any such advantage and at the time of transaction it was land-locked. At pages 16 and 17 (paragraph 13) of the Report submitted by the Valuer, he has pointed out that the proposed 40

feet D.P.Road in fact bifurcates the original old property of the Vendors as also the lessees into two plots. Consequently, in addition to the purchase price paid by the purchasers to the vendor and the lessee society, the purchaser was saddled with liability of terms and conditions imposed by the MCGB for permitting development of other sub divided plot. This included cost of providing road, drainage, storm water channels, lighting etc. and that the additional cost, according to the Valuer, should be taken into consideration to arrive at a final price of the instance land. All this has been ignored by the SLAO and purely on the basis of the sale instance and that too by taking into account the vendors of Plot-B, the SLAO has determined the compensation.

18. According to the Valuer, additional costs to the purchaser of instance land, would be considerably more than the cost of one meter filling required in the case of lands under acquisition. According to him, this cost of filling at the material date, would be Rs.20/- per sq.mr. of the total land area. Hence, according to the Valuer, it is necessary to offset these factors.

19. According to him, the additional burden on the purchaser in the case of instance land in the form of loss of interest etc. would go to increase the ultimate final price of the instance land to the purchaser thereof. The Valuer ignores the other liabilities and on the basis of the comparison made by him and considering the plus and minus points of the location of the lands under acquisition, according to him, the rate thereof as one block should be @ Rs.8,000/- per sq.mtr.. Thereafter, in paragraphs 15 and 16 of his report he makes deductions and recommends Rs.5,900/- per sq.mtr. and Rs.4,450/- per sq.mtr. as the rate at which the compensation should be awarded. In other words, the market value, according to the Valuer, should be worked out at these rates.

20. I am not concerned with other adjustments made by the Valuer on the basis that the plots were to be utilised separately by the members/HUF in question.

21. The chart which is annexed to the valuation report and the plan, is also not disputed. The conveyance of the instance land is also placed on

record in a compilation at page 46. The Valuer has been cross examined at length and I would be making a reference thereto. The cross examination is in question and answer form.

22. Shri Korde - learned Senior Counsel appearing for the claimants submits that once there is no dispute with regard to the location, features and other factors of the lands under acquisition, then the version of claimants which is supported by independent Valuer, should be accepted. The lands under acquisition are definitely of superior quality. He submits that the factors which have been taken into account by the SLAO as well as Valuer, are extremely relevant. After agreeing on the same, there is no warrant for any deductions. He also brings to my notice the answers to some of the questions which have been put to the Valuer during his cross examination. He submits that both, the SLAO and the Valuer, have valued the lands under question as one block. However, in addition, the Valuer, from the plan, has pointed out as to how some plots have a frontage and some are at the rear portion. The frontage portion is marked in Pink and the rear portion is marked as three sub numbers shown as bounded by Green, Yellow and

Blue in that plan. However, two holdings are valued as one block. The submission of Shri Korde is that on the basis of these answers it is clear that the basis adopted by both - the Valuer and the SLAO, is common. It is not as if the Valuer has granted any additional concessions to the claimants. He has made a fair and accurate assessment. In this behalf, the Valuer has in great details, according to Shri Korde, pointed out relevant factors which go into making a valuation. The Valuer has taken into account the fact that due to change in the alignment of in the road, the plots on the rear side were adversely affected. A portion on the land would become incapable of development, according to the Valuer.

23. Shri Korde has laid great emphasis on the fact that even if the land was under reservation, that cannot be considered to be a relevant and germane factor. He has placed strong reliance upon a Division Bench decision of this Court in LAR No.21 of 1988 decided on 16th October 2002. Shri Korde has invited my attention to the factors which have been determined by the Valuer and in that behalf he places reliance upon the answers to question nos.52 to 56. He has also

relied upon the comparison which is made by the Valuer as far as land under acquisition and the instance land. In that behalf, he places reliance upon the answers given to questions 91 and 95 during the course of cross examination. According to Shri Korde, all these answers will show that the report of Valuer and the statements made therein are not falsified. The Valuer has made a fair, just and independent assessment. He submits that once the lands under acquisition fall under residential zone with frontage to Jaiprakash Road, then the rate determined by the Valuer should be accepted by this Court. He submits that it is well settled that complete and total appreciation is not what is contemplated while determining market value. Ultimately, there is some element of guess work and that is permissible. Once the Valuer has not differed with the SLAO as regards basis and sale instance, but has assigned cogent and satisfactory reasons for not accepting the conclusions of SLAO for discarding the rate totally of the instance land, then, on the basis of the instance land, the valuation and the rate recommended by the Valuer deserves to be accepted. More so, when a comparison between the lands has been made by the Valuer in the report having regard to all

relevant factors.

24. Shri Korde has taken me through the cross examination insofar as the instance land. According to him, the cross examination suggests that the valuation report as also the sale instance should be discarded in toto because the price in the case of instance land was not fixed or determined at all. According to Shri Korde, this is not permissible. The valuation report and the contents thereof having not been falsified, then on the basis of some answers given by the Valuer to hypothetical questions, it cannot be said that price was not fixed in the case of instance land. Shri Korde submits that Valuer's Report does not favour the claimants totally. Shri Korde submits that even the suggestion to the Valuer that considering the proximity of the lands under acquisition to sewerage plant would not carry the matter further. It does not favour the Acquiring Body. According to him, independent evidence ought to have been placed by MCGB so as to show that the sewerage plant is functional. It would dissuade a buyer from buying any immovable property adjacent to it. He submits that once again an answer to a hypothetical question without

positive evidence being led by the Acquiring Body, should not persuade this Court to discard the valuation report.

25. Shri Korde has also pointed out that on account of deferred payment facility the instance brought to the notice of the SLAO as well as Valuer and which is taken as comparable, should not be discarded. He, therefore, submits that there is no justification for scaling down the rate from Rs.7,135/- to Rs.2,500/- per sq.mtr. by the SLAO and the Valuer's Report should be accepted. More so, in the absence of any evidence by Acquiring Body or SLAO for arriving at a lower rate.

26. Shri Korde's submissions have been adopted by Shri Mody and additionally he has pointed out that plots are divided for convenience and for fetching maximum benefits. They, therefore, cannot be viewed as single ownership or divided between family members and in this behalf he invites my attention to paragraph no.15 of the evidence of Dilip Talsania.

27. Shri Mody appearing for claimant in LAR No.26 of 1991 states that she is distant relative

of Talsanias. He states that there is no scope for division and bifurcation. He has also supported the valuation done by the Valuer. He submits that it is true that entire Survey no.137 is not abutting on Jaiprakash Road. It may have proximity to the same. However, by an artificial division made, the market value of the land cannot be lowered as the idea always was to sell it as one plot. Merely because survey numbers have been given, that cannot be the basis for making distinction. He adopts the arguments of Shri Korde on the issue of proximity of the lands under acquisition to the sewerage plant. Finally, he submits that deductions made by the SLAO are without any basis. On the other hand, the report of the Valuer can be relied upon. Accordingly, he submits that the compensation should be at the rate determined by the Valuer.

28. Shri Makhija appearing for the Acquiring Body has focused his submissions mainly on the valuation report. Once, according to him, the Valuer proceeds on the same basis as that of the SLAO and also takes into consideration only one instance, then it was the plain duty of the Valuer to have made an independent and proper assessment of the market value. He submits that

the answers which are given by the Valuer to certain material and relevant questions, would demonstrate that the Valuer has done nothing but adding something to the award of the SLAO.. While doing so, the Valuer does not take into account the instances which have been discarded by the SLAO.. He could not discard these instances straight way. More so, without assigning any reasons. This demonstrates that he made no independent inquiry. He did not peruse or call for any documents pertaining to other transactions. A Valuer, according to him, steps in as an expert and it is his duty to assist everybody concerned in valuation. When the Valuer is aware of all principles, then the report ought to have been fair and complete and not vulnerable at all. In this case, according to Shri Makhija, the report is vulnerable and should not be relied upon.

29. Shri Makhija submits that valuation report cannot be accepted in part or rejected in part, as is sought to be suggested. He submits that if the Valuer’s Report is vulnerable, then it must be discarded in toto. In the present case, there is no other evidence save and except report of the Valuer and once it is demonstrated to be

vulnerable and not independent, then the entire claim must fail. He submits that the claimants cannot blame the Valuer and more so the claimant in LAR No.26 of 1991. He submits that if she wanted to set up an independent case, then she should have cross examined the Valuer which is admittedly not done. For all these reasons the claim must be rejected.

30. Shri Makhija submits that as far as the instance land/sale transaction is concerned, determination of price is necessary ingredient. In the case of the instance land, admitted fact is that there is deferred payment facility. There is an interest component because of delay in payment of instalments. There is no break-up in the report nor is there any comment in the report of the Valuer, which would assist the Court in appreciating these aspects independently. In other words, the price component and the interest component should have been indicated by the Valuer with appropriate comments. The price is not at all known with regard to the instance land. It is something which must be certain and accurate. No guess work as far as price is concerned, is permissible in law. In these circumstances, the

evidence/report of Valuer is incapable of being relied upon. He invites my attention to the answers to question nos.197 to 205 in the cross examination. He submits that it was the duty of the claimants to have examined the parties to the transaction in the case of the instance land. Even the Valuer had instances other than Vazirani's land including those discarded by the SLAO, but he choses not to take them into consideration. For all these reasons, according to Shri Makhija, the references must fail.

31. For appreciating these contentions, it is necessary to refer to some settled principles. In one of the recent decisions reported in AIR-2005-SC-3467 (Ranvir Singh and another Vs. Union of India) the Supreme Court observed thus:-

> "29. While adopting the said method, in our opinion, the High Court committed manifest errors. The market value of fully developed land cannot be compared with wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, it is trite, the nature of the land plays an important role.
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> 31. The High Court did not consider any relevant criteria on the basis whereof it could come to the conclusion that the value of the freehold lands would be

double of the value of the leasehold lands. The fact that in terms of the brochure the leasehold was to be a perpetual one and the ground rent payable therefor was absolutely nominal being Re.1/- per plot per annum for the first five years and thereafter at the rate 2 1/2% of the total amount of the premium, which was to be enhanced only after every 30 years, was a relevant factor which should have been taken into consideration for arriving at a finding in that behalf. It is worth noting that the terms and conditions were set out for sale by the Delhi Development Authority on behalf of the President of India of perpetual lease-hold rights in the residential plots under the Rohini Scheme.

33. We need not dilate on the relevant criteria for determining the market value as the same are no longer res integra. The relevant factors which were to be taken into consideration for determining the market value have recently been stated by this Court in Viluben Jhalejar Contractor (Dead) By LRs. Vs. State of Gujarat [{2005} 4 SCC 789}. See also Basavva (supra).

34. Furthermore, it is well-settled that the sale deeds pertaining to portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands. (See Land Acquisition Officer {Revenue Division Officer} Nalgonda (A.P.) Vs. Morisetty Satyanarayana and Others (2002) 10 SCC 570).

35. For the purpose of determining the market value, even market conditions prevailing as on the date of notification are relevant (See Jasti Rohini {supra}).

36. The burden of proof that the acquired land and the land covered by sale transaction bear similar or same

> potentialities or advantageous features is also on the claimant. (See Jawajee Nagnatham {supra} P. Ram Reddy {supra} and Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others (2001 7 SCC-650).
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> 37. Sale price in respect of a small piece of land, it is well settled, cannot be the basis for determination of a market value of a large stretch of land. In Ram Phool (supra), this Court held that an isolated deed of sale showing a very high price cannot be the sole basis for determining the market value. The said decision was rendered in relation to a land situated at village Poothkalan which is adjacent to the lands in question. Even the claimants, it is interesting to note, had exhibited sale deeds in respect to the land situated at village Poothkalan for proving their claim."

32. Similarly, the other principle, equally well settled, is set out in three decisions of Supreme Court which are reported in AIR-2004-SC-288 (Smt.Lila Ghosh (dead) through LR Vs. State of West Bengal with State of West bengal Vs. Smt.Lila Ghosh (dead) through LR.), AIR-2004-SC-1179 (Panna Lal Ghosh and others Vs. Land Acquisition Collector and others), and AIR-2004-SC-2006 (Kiran Tandon Vs. Allahabad Development Authority and another). The Supreme Court has underlined the need of making appropriate deductions and whenever a property or land is developed, it does not mean that when

such instance is being considered for the purposes of arriving at a market value for undeveloped land, the same price will be fetched by the land under acquisition. The principles with regard to consideration of sale instance also have been laid down by the Hon’ble Supreme Court. The time factor and the nature of land are relevant considerations.

33. Applying the settled principles to the present case it is clear that as far as the basic aspects are concerned, there is no dispute. The land under acquisition or at least a substantial portion has a frontage on an arterior road namely Jaiprakash Road. The surroundings are developed. All amenities are available. The only aspect which has been pressed as far as determination of market value by the Acquiring Body is that the sale instance pertains to a land which is half kilometre away from Andheri Railway Station. Here, the distance is more than a kilometre or nearly a kilometre, according to the Acquiring Body. Similarly, atleast part of the lands under acquisition have no direct proximity or access to the arterior road. Further, they are vacant. Therefore, appropriate deductions will have to be made with regard to provision of infrastructure,

levelling and filling of the lands under acquisition.

34. The other aspect highlighted is that the lands under acquisition are situate within the vicinity of Municipal Sewerage Plant. Therefore, even if the lands are developed for residential and commercial user, that would be an negative factor.

35. Before observing anything with regard to the above aspects, it is necessary to deal with the submissions of Shri Makhija that the instance which is relied upon by the SLAO as well as Valuer, does not indicate price. The cross examination proceeds on the basis that the consideration in respect of instance land of Rs.1.18 crores was paid in instalments. The agreement provided for payment by instalments. However, in the facts and circumstances of present case, and the questions posed during the course of cross examination, would suggest that the emphasis is on deferred payment of price. It is not as if the price is not indicated at all. The questions which have been posed with regard to deferred payment of price and the suggestion that when price is paid in instalments it would

be higher than if it is paid lump-sum or at one go, would suggest that the Acquiring Body is not proceeding on the basis as submitted by Shri Makhija. On the other hand, the endeavour is to demonstrate that the price of instance land would not be a complete indicator because a facility of deferred payment was granted to the parties.

36. This aspect becomes further clear if question nos.202 and 204 are perused together with answers thereto. The attempt to demonstrate that price of instance land takes into account component of interest and it would not be possible to make distinction in the price component and interest component (question no.204), is not to be viewed in isolation, but will have to be seen in the context of the stand taken by the Acquiring Body before the SLAO as well. That instance land is comparable otherwise is not disputed. It is not the submission of Shri Makhija that the same should be discarded because of size, dimension, location etc. That other instances are discarded without proper reasoning is the complaint but how they were comparable is not indicated by Shri Makhija. Shri Makhija could not point out any principle of law to the effect that decerred payment facility

being granted means price is not fixed or certain. Ultimately, no evidence is led on behalf of the Acquiring Body. The attempt now made to show that the instance land is a peculiar transaction where there was no determination of price, cannot be accepted. More so, when certain general questions are posed to the Valuer.

37. As far as instance land is concerned, it is owned by one Vazirani family. As far as instance land is concerned, one Imigrants Ideal Purchasers Co-operative Society was the Lessee in respect of the property since 1960 under registered indenture. It paid rent to the owner. The lessee was in possession of the society. The plot of land was sub divided by a D.P.Road. The society was carrying on business on the entire plot of land.

38. Under agreements in writing dated 16th October 1986 made between the original vendors, the lessee society and confirming party namely M/s.Supercon Corporation the original vendors and lessee agreed to sell to the confirming party and also to have rights of development concerning sub divided Plot-B and the confirming party agreed to purchase the development rights from the original

vendors and the lessee society and to the development concerning Plot-B along with benefits of terms and conditions of the lay out. The total consideration to be paid by the confirming party was Rs.1.18 crores. Thereafter, the conveyance refers to payment of Rs.1,06,20,000/- and Rs.11,80,000/- paid by confirming party (the developer) to the original vendors. The confirming party commenced the work of construction of buildings known as Krishna Kaveri and all certificates were issued in the month of October 1987. The construction of the building was completed and Occupation Certificate was obtained on 24th January 1991. The balance building "Kailash" was also constructed. It is agreed between the flat purchasers/members of co-operative housing society who are named as purchasers in the instance, that the recitals ("T" and "U") set out the rate which was calculated with regard to the Floor Space Index. Further payments are also recorded and that is how the purchaser co-operative housing society having paid along with confirming party a sum of Rs.4,10,34,000/- acquired right, title and interest in the instance land.

39. As is well settled that the best possible

assistance for arriving at market value is sale instance of adjoining property. Therefore, it will not be permissible now to discard this instance as suggested by Shri Makhija. More so, when I have arrived at a conclusion that recitals in the agreement, cannot be read in isolation. So also, the suggestions made during the course of cross examination. From the answers given by the Valuer during the course of cross examination, it is not as if he has conceded that there is no price which was determined in the case of instance land. As pointed out above, the attempt is to suggest that because of interest component it is not possible to reduce and bifurcate between the components namely price and interest.

40. Once the instance land has been accepted as the only guiding sale transaction and the rest have been discarded by assigning reasons by both SLAO and the Valuer, then it would not be possible to accept the contentions of the Acquiring Body to now disregard the same. Additionally, I am satisfied that in the case of instance land when the agreement was arrived at in the year 1986 and the price was determined, as far as lands under acquisition are concerned,

they would have to be valued by increasing this price proportionately. While doing so, the deductions as are necessary to be made, will have to be made in the case of lands under acquisition. That factor has not been totally ignored by both, the SLAO and the Valuer. However, certain deductions made by the SLAO and particularly those pertaining to some legal charges etc; are not tenable at all. The SLAO has proceeded on the basis that as far as lands under acquisition are concerned, considerable deductions will have to be made on payment of professional fees to the Architect for preparing lay out plan and legal charges to the Solicitors for preparing agreements etc.. In my view, this cannot be the decisive factor. At the most, depending upon development some allowances will have to be made but that is not something which is so substantial as is thought of by the SLAO.. As far as deduction for areas that will have to be consumed for open spaces and road to be provided by preparing a lay out of a large area of 10,000 sq.mtrs. and cost of filling as well as providing other infrastructure is concerned, there appears to be some substance in the contentions of Acquiring Body. However, at the same time these factors will have to be balanced

with the increase that is to be given over the value/price of the instance land.

41. Admittedly, there the agreement is of year 1986. The award of the SLAO is of 1st October 1990 and the relevant date, in our case, is 5th January 1989. Therefore, over a period of 3 years in a locality like Andheri and in case of lands which are centrally located, some increase is bound to be there. While it may be true that a large plot fetches a lesser price than smaller plots, yet, here that is not the position. Here also, there could be transactions with regard to the plots which are divided into survey numbers indicated above.

42. The SLAO is aware of this as is clear from a perusal of internal page 22 of the award. The SLAO observes that the trend of price is radically changed; it is always on the upper side, and, therefore, final rate of compensation to be fixed in the year 1988, cannot reasonably the same which was considered while paying advance compensation.

43. As far as Valuer is concerned, he has indicated in his report itself that if the plus

and minus factors are taken into consideration and allowances/deductions made, the rate of the instance land at the material date is Rs.7,135/- per sq.mtr.. In the case of lands under acquisition, it should be considered at Rs.8,000/- per sq.mtr.. Thereafter, he proceeds to make necessary deductions and arrives at the rate of Rs.6,675/- per sq.mtr. as far as survey no.137(part). As far as survey no.138(P), the rate on the basis that it would be 2/3rd of the rate of survey no.137, he determines the market value with regard to this survey number at Rs.4,450/- per sq.mtr..

44. As is observed by the Hon’ble Supreme Court that market value of wholly developed land cannot be compared with undeveloped land but for determining market value/price of land situated at a little distance it plays an important role. The Supreme Court thereafter refers to another factor namely market conditions prevailing on the date of Notification and terms them as relevant. The burden of proof with regard to the potentialities or advantages is always on the claimant. The other decision noted by me of the Supreme Court makes it clear that amount of compensation cannot be ascertained with

mathematical accuracy. The Supreme Court in the decision reported in AIR-2005-SC-2214 (Viluben Jhalejar Contractor (D) by LRs Vs. State of Gujarat) after referring to the settled principles, has set out the positive and negative factors. According to the Hon’ble Supreme Court, a comparable instance has to be identified having regard to the proximity from time angle as well as proximity from the situation angle. The positive and negative factors have also been set out and the negative factors, apart from largeness of the area, would also include some special disadvantageous factors, which would deter a purchaser. In this decision, the Supreme Court has observed that a smaller plot may be within the reach of many but a large plot of land will have to be developed preparing a lay out plan, carving out roads, leaving open spaces, plotting out similar plots, waiting for purchasers. These aspects cannot be brushed aside. The development charges may range between 20 to 50% of the total price. It has also referred to certain decisions where deductions higher than 50% were also made. Thus, it is not as if the supreme Court goes by earlier views and observes that the deductions being one third normally, can even be more. The Valuer in the

present case is aware of all such principles including those pertaining to deductions. But he proceeds on the basis that the factors which he has taken into account, is going to increase ultimate final price of the instance land to the purchaser. He has not gone into further aspects and in his report itself he observes that to err on safer side in favour of the Acquiring Body, he has ignored other liabilities and has taken into consideration price disclosed by the instance. In other words, the price payable by the purchaser to the vendor and the lessee society. The Valuer is also aware of the deductions that will have to be made for the purposes of laying down internal roads, provision of open spaces and preparing lay out of large plot 10,056 sq.mtrs.. However, he terms the reduction made by the SLAO on this count, as drastic. He observes that 15% of the plot area may have to be left as common recreation ground, 15% for internal roads but in such a lay out, according to the Valuer, the lay out sub plots would fetch 10% higher value. According to him, the land abutting to Jaiprakash Road would be used for shopping and commercial user and hence would fetch higher price. In case of the instance land, there are no such qualities and capabilities.

45. In my view, the instance land is admeasuring 2249.7 sq.mtr.. The land under acquisition as set out, is more than 10,000 sq.mtrs.. One cannot agree with the Valuer when he says that area of lands under acquisitions is not that huge. He makes a guess work that it can be made into three sub plots of 2,500 sq.mtrs. or little below after providing for recreation ground and internal roads.

46. In my view, the factors and principles as laid down by the Supreme Court, if applied to the lands under acquisition, it would be clear that considering its largeness, deductions and provisions as above, one cannot proceed on the basis that they would be sold as sub plots of 2,500 sq.mtrs. or below necessarily. Ultimately, the road is at one side and with regard to the survey no.138, some combination will have to be arrived at before these lands are offered for sale. Therefore, even assuming that the instance land was disposed of in 1986 and the relevant date is 5th January 1989, that there is some increase which has to be allowed, it is not possible to uphold the conclusions of the Valuer in toto. The factors which have gone into while

concluding the transaction and the commercial considerations would also provide a guide in case of the lands under acquisition. Therefore, taking an over all picture and applying all plus and minus factors, the claimants have made out a case for enhancement but not the rate which is determined by the Valuer. The claimants are entitled to enhancement in case of survey no.137 from Rs.2,500/- to Rs.3,300/- per sq.mtr. and insofar as survey no.138, the same stands enhanced from Rs.1,600/- to Rs.2,100/- per sq.mtr..

47. I have arrived at these figures and the market value of the lands under acquisition by taking into consideration all factors which are relevant and necessary including some allowances and/or deductions because of the proximity of the lands under acquisition to sewerage plant as well. Thus, the LARs stand disposed of in the following terms.

48. ORDER :-

A) Each of the references would stand disposed of in terms of the rate at which the market value has been arrived at along with other benefits

which are computed in the Calculation Sheet which is marked as far as LAR No.18/1991, as "Annexure-A", Annexure-B as far as LAR No.19/1991, Annexure-C as far as LAR No.20/1991, Annexure-D as far as LAR No.21/1991, Annexure-E as far as LAR No.22/1991, Annexure-F as far as LAR No.23/1991, Annexure-G as far as LAR No.25/1991 and Annexure-H as far as LAR No.26/1991;

B) The figures at the rate determined by me and reflected in the calculation sheets are agreed upon by the parties;

C) The SLAO and the Acquiring Body are directed to deposit the compensation in this Court within a period of 16 weeks from the date of receipt of an authenticated copy of this order duly issued by the Registry;

47. In all fairness Shri Korde submits that he is not pressing for costs in these references. The same are, therefore, disposed of without making any order as to costs. All concerned to act on an ordinary copy of this order duly authenticated by Registry of this Court.

(S.C.DHARMADHIKARI, J.)

ANNEXURE-A : LAR 18/1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.28,66,688.72 (Rupee Twenty Eight Lak Sixty Six Thousand Six Hundred Eighty Eight and Seventy Two Paise only) together with interest @ 9% p.a. on the sum of Rs.8,23,240.69 (Rupees Eight Lak Twenty Three Thousand Two Hundred forty and Sixty Nine Paise only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of Sixteen (16) weeks from the date of issuance of authenticated copy of this order.

2. In view of the affidavits of Smita M. Thakkar, Amita J. Jasani, Kamal A. Talsania, Nirav A. Talsania, Dilip H. Talsania, Prafulla D. Talsania, Nitesh D. Talsania, which are taken on record, Mrs.Sharda Pratap Talsania who is shown as Claimant No.1a as well as Claimant No.2, in the title of Reference, is entitled to receive the entire amount to be deposited in Court by the Municipal Corporation of Greater Bombay in the above Reference. Liberty to Mrs.Sharda Pratap Talsania to withdraw the entire amount awarded to be deposited in Court in this

Land Acquisition Reference.

ANNEXURE-B : LAR NO.19 OF 1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.62,67,204.12 (Rupees Sixty Two Lakh Sixty Seven Thousand Two Hundred Four and Paise Twelve only) together with interest @ 9% p.a. on the sum of Rs.17,99,782.93 (Rupees Seventeen Lakh Ninety Nine thousand Seven Hundred Eighty Two and Paise Ninety Three only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of 16 (Sixteen) weeks from the date of issuance of an authenticated copy of this order. Liberty to the Claimants to withdraw the said amount.

ANNEXURE-C : LAR NO.20 OF 1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.70,60,549.28 (Rupees Seventy Lakh Sixty Thousand Five Hundred forty Nine and Paise Twenty Eight only) together with interest @ 9% p.a. on the sum of Rs.20,27,611.65 (Rupees Twenty Lakh Twenty Seven Thousand Six Hundred Eleven and Paise Sixty Five only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of 16 (Sixteen) weeks from the date of issuance of an authenticated copy of this order. Liberty to the Claimants to withdraw the said amount.

ANNEXURE-D : LAR NO.21 OF 1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.72,23,651.51 (Rupees Seventy Two Lakh Twenty Three Thousand Six Hundred Fifty One and Paise Fifty One only) together with interest @ 9% p.a. on the sum of Rs.20,74,450.49 (Rupees Twenty Lakh Seventy Four Thousand Four Hundred fifty and Paise Forty Nine only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of 16 (Sixteen) weeks from the date of issuance of an authenticated copy of this order. Liberty to the Claimants to withdraw the said amount.

ANNEXURE-E : LAR NO.22 OF 1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.24,84,789.73 (Rupees Twenty Four Lakh Eighty Four Thousand Seven Hundred Eighty Nine and Seventy Three Paise only) together with interest @ 9% p.a. on the sum of Rs.7,13,568.93 (Rupees Seven Lakh Thirteen Thousand Five Hundred Sixty Eight and Paise Ninety Three only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of 16 (Sixteen) weeks from the date of issuance of an authenticated copy of this order.

2. In view of the affidavits of Smita M. Thakkar, Amita J. Jasani, Dilip H. Talsania, Kamal A. Talsania, Sunita N. Thakkar, which are taken on record. Mrs.Sharda Pratap Talsania who is shown as Claimant No.1a in the title of the Reference is entitle to receive the entire amount to be deposited in Court by the Municipal Corporation of Greater Bombay in the above Reference. Liberty to Mrs.Sharda Pratap Talsania to withdraw entire amount ordered to be deposited in this Court.

ANNEXURE-F : LAR NO.23 OF 1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.47,29,080.56 (Rupees Forty Seven Lakh Twenty Nine Thousand Eighty and Paise Fifty Six only) together with interest @ 9% p.a. on the sum of Rs.13,58,072.64 (Rupees Thirteen Lakh Fifty Eight Thousand Seventy Two and Paise Sixty Four only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of 16 (Sixteen) weeks from the date of issuance of an authenticated copy of this order. Liberty to the Claimant to withdraw the said amount.

ANNEXURE-G : LAR NO.25 OF 1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.38,75,354.16 (Rupees Thirty Eight Lakh Seventy Five Thousand Three Hundred Fifty Four and Paise Sixteen only) together with interest @ 9% p.a. on the sum of Rs.11,12,903.96 (Rupees Eleven Lakh Twelve Thousand Nine Hundred Three and Paise Ninety Six only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of Sixteen (16) weeks from the date of issuance of an authenticated copy of this order.

2. In view of the affidavit of Mrs.Sunita N. Thakkar which is taken on record, Mrs.Kamal Anil Talsania who is whown as Claimant No.1A as well as 2A in the title of the Reference, is entitled to receive the entire amount to be deposited in Court by Municipal Corpn. of Greater Bombay in this reference. Liberty to Mrs.Kamal Anil Talsania to withdraw the entire amount ordered to be deposited in this Court in this LAR..

ANNEXURE-H : LAR NO.26/1991

1. The Acquiring Body i.e. the Municipal Corporation of Greater Bombay is directed to deposit in Court a sum of Rs.19,56,125.85 (Rupees Ninteen Lakh Fifty Six Thousand One Hundred Twenty Five and Paise Eighty Five only) together with interest @ 9% p.a. on the sum of Rs.5,61,750/- (Rupees Five Lakh Sixty One Thousand Seven Hundred Fifty only) from 1.4.2006 till date of deposit. The said amount to be deposited within a period of 16 (Sixteen) weeks from the date of issuance of authenticated copy of this order. Liberty to the Claimants to withdraw the said amount.